UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDITH CRUZ, Plaintiff	)	
v.	)	Civil Action No. 06-30087-KPN
MICHAEL J. ASTRUE, Commissioner of the Social Security Administration,[1] Defendant	)	

MEMORANDUM AND ORDER WITH REGARD TO PLAINTIFF'S MOTION TO REVERSE and DEFENDANT'S MOTION TO AFFIRM THE DECISION OF THE COMMISSIONER (Document Nos. 9 and 13)
May 2, 2007

NEIMAN, C.M.J.

This matter is before the court pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3) which provide for judicial review of a final decision by the defendant, the Commissioner of the Social Security Administration (the "Commissioner"), regarding an individual's entitlement to Supplemental Security Income ("SSI") disability benefits. Edith Cruz ("Plaintiff") claims that the Commissioner's decision denying her such benefits -- memorialized in a March 15, 2005 decision by an administrative law judge -- is not supported by substantial evidence and is predicated on errors of law. Plaintiff has

[1] Michael J. Astrue became the Commissioner of Social Security on February 12, 2007, and is substituted for Jo Anne B. Barnhart as the defendant in this action pursuant to Fed. R. Civ. P. 25(d)(1).

moved to reverse the decision and the Commissioner, in turn, has moved to affirm.

With the parties' consent, this matter has been reassigned to the undersigned pursuant to 28 U.S.C. § 636(c) for all purposes, including entry of judgment. For the reasons set forth below, the Commissioner's motion to affirm will be denied and Plaintiff's motion will be allowed but only to the extent that a remand has been deemed appropriate.

I. STANDARD OF REVIEW

A court may not disturb the Commissioner's decision if it is grounded in substantial evidence. *See* 42 U.S.C. §§ 405(g) and 1383(c)(3). Substantial evidence is such relevant evidence as a reasonable mind accepts as adequate to support a conclusion. *Rodriguez v. Sec'y of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981). The Supreme Court has defined substantial evidence as "more than a mere scintilla." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Thus, even if the administrative record could support multiple conclusions, a court must uphold the Commissioner's findings "if a reasonable mind, reviewing the evidence in the record as a whole, could accept it as adequate to support his conclusion." *Ortiz v. Sec'y of Health & Human Servs.*, 955 F.2d 765, 769 (1st Cir. 1991) (citation and internal quotation marks omitted).

The resolution of conflicts in evidence and the determination of credibility are for the Commissioner, not for doctors or the courts. *Rodriguez*, 647 F.2d at 222; *Evangelista v. Sec'y of Health & Human Servs.*, 826 F.2d 136, 141 (1st Cir. 1987). A

denial of benefits, however, will not be upheld if there has been an error of law in the evaluation of a particular claim. *See Manso-Pizarro v. Sec'y of Health & Human Servs.*, 76 F.3d 15, 16 (1st Cir. 1996). In the end, the court maintains the power, in appropriate circumstances, "to enter . . . a judgment affirming, modifying, or reversing the [Commissioner's] decision" or to "remand[ ] the cause for a rehearing." 42 U.S.C. § 405(g).

II. BACKGROUND

Plaintiff, born in 1961, has a high school education and appears to have last worked in 1988. (Administrative Record ("A.R.") at 56, 60, 65.) She presently resides in Springfield, Massachusetts. (A.R. at 56.) Plaintiff claims that her disability commenced on August 1, 1991. (A.R. at 61.)

A. MEDICAL HISTORY

As might be expected, the pictures painted by the parties relative to Plaintiff's medical history are quite different. Citing a panoply of ailments -- including "poorly controlled diabetes," asthma, coronary artery disease, and peripheral vascular disease with claudication in her legs[2] -- Plaintiff asserts that her "chief problems are general fatigue from her various disease processes with specific leg fatigue, most likely due to vascular disease and perhaps also to peripheral neuropathy." (Plaintiff's Brief at 3.) In some contrast, the Commissioner describes Plaintiff's conditions as well-controlled but

[2] "Claudication is a condition characterized by pain, tension and weakness with walking, and the disappearance of the symptoms after a period of rest. It occurs with occulsive arterial diseases of the limbs." (Commissioner's Brief at 3 n.2 (citing *Dorland's Medical Dictionary*, 338 (28th ed. 1994) (hereinafter "*Dorland's*").)

for Plaintiff's frequent non-compliance with medical regimens. (See Commissioner's Brief at 2-3.) Essentially adopting the structure utilized by the Commissioner, the court believes the following exposition most accurately reflects the record.

1. General Medical Evidence

Plaintiff began receiving medical treatment from Westside Medical Associates in 1997 for various conditions, including high blood pressure, asthma and diabetes. (See A.R. at 192-209.) During this time period, her allergies and diabetes were controlled with medication and insulin. (*See id*.) On June 27, 2001, Plaintiff was seen for increased blood sugar and complaints of right leg pain. (A.R. at 188-89.) She had not been to the clinic for more than a year and was out of medication. (A.R. at 189.) By later that year, medications had stabilized Plaintiff's diabetes. (A.R. at 186-87.) In the interim, on August 7, 2001, Susan Bankoski, an audiologist, opined that Plaintiff had bilateral hearing loss, predominantly sensori-neural, with excellent speech discrimination; Ms. Bankoski recommended hearing aids. (A.R. at 126.)

In November and December of 2002, Plaintiff revisited Westside Medical Associates and complained of occasional calf pain and a mild headache. (A.R. at 179-82.) Treatment notes at the time indicated that Plaintiff had not been compliant with her medication and that her diabetes was not controlled. (A.R. at 179.) Plaintiff agreed to begin insulin. (*Id.*) By January of 2003, Plaintiff's diabetes had improved, but it was noted at that time that she was not following blood sugar testing and diet recommendations. (A.R. at 178.)

Plaintiff's diabetes continued to improve with insulin treatment the following year,

but she complained of claudication symptoms after walking one or two blocks. (A.R. at 70.) Then, in October 2003, due to high blood pressure and peripheral vascular disease, Plaintiff underwent a stress test with negative results for ischemia.[3] Plaintiff complained of pain and fatigue with exertion and subsequently underwent a myocardial perfusion test, which indicated mild ischemia and poor exercise tolerance. (A.R. at 212-15.)

In October of 2004, Dr. Jonna Gaberman at the Neighborhood Health Center noted that Plaintiff's asthma was well controlled, but that she had not been taking her insulin. (A.R. at 283-84.) Dr. Gaberman thereafter completed a questionnaire on December 16, 2004, in which she listed Plaintiff's medical problems as poorly controlled diabetes, asthma, coronary artery disease, hypertension, hyperlipidemia, peripheral vascular disease with claudication, obesity, and diminished hearing. (A.R. at 282.) Dr. Gaberman reported that Plaintiff was taking over fifteen medications daily and that she had "very severe and dangerous underlying vascular disease" and could not tolerate long-term standing or lifting and pushing. (*Id*.)

2. Cardiac Treatment

Meanwhile, on November 3, 2003, Dr. Gregory Giugliano of the Cardiac Unit at Baystate Medical Center reported that Plaintiff had experienced chest pressure and shortness of breath on exertion for approximately one year. (A.R. at 142.) He also noted that Plaintiff was in no apparent distress, had clear lungs, a regular heart rhythm,

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[3] "Ischemia is a 'deficiency of blood supply to the heart muscle, due to obstruction or constriction of the coronary arteries.'" (Commissioner's Brief at 3 n.3 (quoting *Dorland's* at 861).)

positive pulses, and no edema in her extremities. (A.R. at 143.) Since Plaintiff's testing revealed anterior ischemia, however, a cardiac catheterization was performed with angioplasty and stent placement. (A.R. at 141-44.)[4] By December 15, 2003, Dr. Giugliano advised that Plaintiff was "doing well from a cardiac standpoint and much improved." (A.R. at 140.) He noted, however, that Plaintiff had not tolerated beta blockers and therefore increased other medications to control her blood pressure. (*Id*.)

Shortly thereafter, a cardiac rehabilitation program was established to maximize Plaintiff's cardiovascular health and fitness although, on initial assessment, Plaintiff exhibited poor activity tolerance with leg fatigue and shortness of breath. (A.R. at 239-40, 256-57.) The goals of the program were to educate Plaintiff about the risk factors involved with her condition and provide dietary instructions and assessments. (A.R. at 256-57.)

On March 1, 2004, Dr. Giugliano reported the Plaintiff was less fatigued and had shown "dramatic improvement in her glucose control," but that she continued to complain of "tiredness" in her legs. (A.R. at 137-38.) He also noted that Plaintiff was not taking certain medication (perhaps due to some confusion on her part), had stopped the cardiac rehabilitation due to an increased heart rate, and had gained seven pounds since her December 2003 visit. (A.R. at 137.) Noting mild claudication symptoms, Dr. Giugliano recommended that Plaintiff return to cardiac rehabilitation, exercise, and stay on cardiac medication for at least one year. (A.R. at 137-38.)

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[4] Dr.Giugliano was not able to obtain an electrocardiogram because Plaintiff was an hour late for her appointment. (A.R. at 143.)

Plaintiff's cardiac rehabilitation continued from March 3, 2004 through June 2, 2004, during which time she was exercising, walking twenty minutes each day and generally feeling better. (See A.R. at 228-37.) However, she had not lost weight and continued to complain of leg fatigue. (See *id.*)

On June 28, 2004, Dr. Sang Won Rhee, a physician at Vascular Services of Western New England, also found a mild degree of claudication in Plaintiff's lower extremities. (A.R. at 264-65.) Plaintiff had no pain at the time but felt fatigue in both legs. (A.R. at 264.) Dr. Rhee suggested conservative treatment with medication. (A.R. at 265.) One month later, on July 26, 2004, Dr. Rhee discussed with Plaintiff the possibility of an aortogram. (A.R. at 263.)

In the interim, on July 12, 2004, Dr. Giugliano reported that Plaintiff's chief problem was bilateral claudication and recommended continued daily walks. (A.R. at 290-91.) Then, on October 18, 2004, he noted "significant claudication" and again encouraged Plaintiff to walk or exercise and prescibed medication. (A.R. at 288-89.)

Dr. Satyendra Giri, a vascular specialist, examined Plaintiff on November 10, 2004, and found her symptoms suspicious for bilateral intermittent claudication and possible renal artery stenosis. (A.R. at 286-87.) He made no changes to Plaintiff's medications and advised that she return in one month. (*Id*.)

3. Agency Assessments

On December 23, 2003, Dr. J. Scola, a physician with the Massachusetts Disability Determination Services ("DDS"), completed a physical residual functional capacity assessment form. (A.R. at 128-35.) He limited Plaintiff to occasional lifting or

carrying ten pounds and frequent lifting or carrying less than ten pounds and opined that Plaintiff could stand at least two hours in an eight-hour workday, sit about six hours in an eight-hour workday and climb occasionally. (A.R. at 129-30.) He also noted that Plaintiff should avoid concentrated exposure to fumes. (A.R. at 132.)

On March 24, 2004, Dr. Upadhyay Ram, another DDS physician, completed a second residual functional capacity assessment form. (A.R. at 145-52.) He generally concurred with Dr. Scola's opinion, but noted that Plaintiff could occasionally lift or carry twenty pounds and could frequently lift or carry ten pounds and opined that Plaintiff could occasionally climb, balance, stoop, kneel, crouch and crawl. (A.R. at 146-47.) He noted as well that Plaintiff should also avoid concentrated exposure to extreme cold, fumes, and hazards. (A.R. at 149.)

B. PROCEDURAL HISTORY

In her application for SSI benefits dated December 4, 2003, Plaintiff claimed, as described, that she had been disabled from a variety of ailments since August of 1991. (A.R. at 56.)[5] Her application was denied both initially and upon reconsideration (A.R. at 30-32, 35-37), as well as after a February 8, 2005 hearing before an administrative law judge (A.R. at 16-27). The Appeals Council denied Plaintiff's request for review on March 24, 2006 (A.R. at 8-11), thereby making the ALJ's decision of March 15, 2005, the final decision of the Commissioner. Plaintiff filed the instant action on May 25, 2006.

[5] It appears that Plaintiff had previously filed an SSI application on March 30, 1993, but did not further pursue that application once it was denied. (See A.R. at 19.)

III. DISCUSSION

An individual is entitled to SSI benefits under the Social Security Act ("the Act") if, among other things, she is needy and disabled. *See* 42 U.S.C. §§ 1381a and 1382c(a)(3). Plaintiff's financial need is not challenged.

A. DISABILITY STANDARD AND THE ALJ'S DECISION

An individual is considered disabled if she is unable to participate in "any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 1382c(a)(3)(A). A claimant is considered disabled under the Act:

> only if [her] physical of mental impairments are of such severity that [s]he is not only unable to do [her] previous work but cannot, considering [her] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which [s]he lives, or whether a specific job vacancy exists for [her], or whether [s]he would be hired if [s]he applied for work.

42 U.S.C. § 1382c(a)(3)(B). *See generally Bowen v. Yuckert*, 482 U.S. 137, 146-49 (1987).

In determining disability, the Commissioner follows the five-step protocol described by the First Circuit as follows:

> First, is the claimant currently employed? If [s]he is, the claimant is automatically considered not disabled.
>
> Second, does the claimant have a severe impairment? A "severe impairment" means an impairment "which significantly limits the claimants physical or mental capacity

> to perform basic work-related functions." If [s]he does not have an impairment of at least this degree of severity, [s]he is automatically considered not disabled.
>
> Third, does the claimant have an impairment equivalent to a specific list of impairments contained in the regulations' Appendix 1, Subpart P, Regulation No. 4. If the claimant has an impairment of so serious a degree of severity, the claimant is automatically found disabled.
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> . . . .
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> Fourth, ... does the claimant's impairment prevent [her] from performing work of the sort [s]he has done in the past? If not, [s]he is not disabled. If so, the agency asks the fifth question.
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> Fifth, does the claimant's impairment prevent [her] from performing other work of the sort found in the economy? If so, [s]he is disabled; if not, [s]he is not disabled.

Goodermote v. Sec'y of Health & Human Servs., 690 F.2d 5, 6-7 (1st Cir. 1982).

In the instant case, the ALJ found as follows with respect to these questions: that Plaintiff had not engaged in substantial gainful activity since the alleged onset of her disability (question one); that she had impairments which were "severe," although not severe enough to be listed in Appendix 1 (questions two and three); that she had no past relevant work, so a determination of whether she was unable to perform such work was not possible (question four); but that, given her age, education and residual functional capacity, Plaintiff was able to perform a significant number of jobs in the national economy which involve "light work," such as a ticket seller, parking lot attendant and surveillance system monitor (question five). (A.R. at 26-27.) As a result, the ALJ concluded that Plaintiff does not suffer from a disability as defined in the Act.

B. ANALYSIS OF PLAINTIFF'S CHALLENGE TO ALJ'S DECISION

Plaintiff makes essentially two substantive arguments in support of her motion. First, she argues that the ALJ failed to give proper weight to the opinion of her treating physician, Dr. Gaberman, and, conversely, relied too heavily on the DDS reviewers. Second, Plaintiff argues that the ALJ impermissibly discounted her subjective complaints regarding the limitations imposed by her impairments and, relatedly, failed to make specific findings regarding her credibility; those failures, Plaintiff asserts, caused the ALJ to rely on faulty testimony from the vocational expert. The court will discuss each argument in turn, after first addressing a procedural argument raised by Plaintiff, namely, that the ALJ failed to fully develop the record.

1. Development of Record

Plaintiff faults the ALJ for having indicated at the close of the hearing on February 8, 2005, that he would be interested in seeking further evidence from Dr. Giugliano but instead, apparently without making further inquiry, proceeded to issue his decision on March 25, 2005. At a minimum, Plaintiff argues, the ALJ ought to have waited until she herself could have obtained further evidence. This failure on the part of the ALJ, Plaintiff argues, ran counter to his regulatory obligation to develop the medical record. *See* 20 C.F.R. § 416.1444 (2007) ("The administrative law judge may stop the hearing temporarily and continue it at a later date if he or she believes that there is material evidence missing at the hearing."); *see also Sims v. Apfel*, 530 U.S. 103, 120 (2000) ("Social Security proceedings are inquisitorial rather than adversarial. It is the ALJ's duty to investigate the facts and develop the arguments both for and

against granting benefits.").

A close examination of the record reveals the weakness of Plaintiff's argument. First, as the relevant transcript of the hearing reveals, the ALJ indicated, at most, that he would re-contact Dr. Giri -- who had apparently taken over from Dr. Giugliano -- and send Plaintiff's counsel copies of any records received.[6] This hardly amounts to a

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[6] ALJ: Ms. Cruz, did any of your doctors tell you to lie down --

CLMT: Yeah.

ALJ: -- and elevate your feet?

CLMT: Yeah.

ALJ: Who?

CLMT: Dr. Juliano [sic].

ALJ: When did he say that?

CLMT: The last two visits. I can't remember the month.

ALJ: Is there anything else, Ms. Suss [sic]?

ATTY: No. But I can certainly try to get whatever -- it sounds like -- I tried Bay State. I haven't heard from them yet. It sounds like Ms. Cruz is in the middle of tests.

ALJ: We'll re-contact Dr. Gary [sic] and if we get anything back, I'll send you a copy. We sent out an original request to Dr. Juliano [sic], but apparently he transferred her care to Dr. Gary [sic]. So then the hearing in the case of Edith Cruz is now closed. Thank you very much for coming today.

failure to develop the record. *Compare Montalvo v. Barnhart*, 239 F. Supp. 2d 130, 137 (D. Mass. 2003) (administrative law judge failed to adequately discharge "heightened duty" to *pro se* claimant). Second, the transcript reveals that Plaintiff's counsel never requested that the hearing record be kept open to submit further evidence. *See Bowen*, 482 U.S. at 146 n.5 ("It is not unreasonable to require the claimant, who is in a better position to provide information about his own medical condition, to do so."). Thus, the ALJ was free to close the hearing as he did.

In any event, on January 6, 2006, Plaintiff submitted additional medical records to the Appeals Council for its consideration. (A.R. at 292-308.) This evidence included a letter dated April 11, 2005, from Dr. Giugliano as well as records relating to a lower extremity angiography performed by him and Dr. Giri on April 22, 2005. Upon review, none of this evidence appears to be new and material, and Plaintiff pursues no such claim.

Plaintiff, however, had also forwarded to the Appeals Council a June 9, 2005 letter from Dr. Gaberman in which she opined that Plaintiff would have difficulty doing even light work because prolonged sitting would cause swelling and numbness in her lower extremities. (See A.R. at 302.) This information may well have been material to the ALJ's consideration of the evidence since, as Plaintiff now candidly acknowledges, Dr. Gaberman, when previously answering a written inquiry from the ALJ, had not addressed Plaintiff's ability to sit. (See A.R. at 282.) Still, Dr. Gaberman's June 9th letter was in no way related to the additional medical information which Plaintiff's

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(A.R. at 333-34.)

counsel mentioned at the end of the administrative hearing. It was, rather, a response to a letter written by Plaintiff's counsel, which is not part of the record, in an apparent attempt to address gaps in the evidence presented to the ALJ.

As described, the Appeals Council denied Plaintiff's request for review on March 24, 2006, finding that the additional medical documentation did not provide a basis for changing the ALJ's decision. (A.R. at 8-11.) Plaintiff does not challenge the Appeals Council's exercise of its discretion in this regard. *Compare Rosado v. Barnhart*, 340 F. Supp. 2d 63, 67 (D. Mass. 2004). Accordingly, this court is left to consider Plaintiff's remaining two arguments in light of the record as it appeared before the ALJ. *See Mills v. Apfel*, 244 F.3d 1, 4 (1st Cir. 2001) (noting that it is improper for a court "[t]o weigh . . . new evidence as if it were before the ALJ").

2. Treating Physician

Substantially, Plaintiff first argues that the ALJ substituted his own opinion for that of Plaintiff's treating physician, Dr. Gaberman, particularly with regard to Plaintiff's residual functional capacity. *See Chelte v. Apfel*, 76 F. Supp. 2d 104, 108 (D. Mass. 1999) ("ALJ may not 'substitute his own layman's opinion for the findings and opinion of a physician.'") (quoting *Gonzalez Perez v. Sec'y of Health & Human Servs.*, 812 F.2d 747, 749 (1st Cir. 1987)). Conversely, Plaintiff contends, the ALJ improperly gave controlling weight to the opinions of the non-examining DDS physicians. The court disagrees on both scores.

In determining a claimant's residual functional capacity, an administrative law judge may consider any medical opinions from acceptable medical sources which

reflect judgments about the nature and severity of the impairments and resulting limitations. *See* 20 C.F.R. § 416.927(a)(2) (2007). Dr. Gaberman, of course, is just such a medical source, even though she had seen Plaintiff only once before the administrative hearing. However, state agency physicians are also experts in the evaluation of the medical issues in disability claims, and administrative law judges must evaluate their findings as they do other opinion evidence. *See* 20 C.F.R. § 416.927(f)(2)(i) (2007). *See also Keating v. Sec'y of Health & Human Servs.*, 848 F.2d 271, 276 (1st Cir. 1988) ("A treating physician's conclusions regarding total disability may be rejected by the [Commissioner] especially when, as here, contradictory medical advisor evidence appears in the record.") (citations omitted).

To be sure, as this court pointed out in *Reeves v. Barnhart*, 263 F. Supp. 2d 154, 161 (D. Mass. 2003), the First Circuit had once held the advisory report of a non-testifying, non-examining doctor could not, in and of itself, "be the substantial evidence needed to support a finding." *Browne v. Richardson*, 468 F.2d 1003, 1006 (1st Cir. 1972). The court was concerned that such a report "lack[ed] the assurance of reliability that comes on the one hand from first-hand observation and first-hand testimony subject to claimant's cross-examination." *Id.* Subsequently, however, the First Circuit clarified "that the principle enunciated in *Browne* is by no means an absolute rule." *Berrios Lopez v. Sec'y of Health & Human Servs.*, 951 F.2d 427, 431 (1st Cir. 1991) (citation omitted). "To the contrary," the First Circuit explained, an advisory report of a non-examining, non-testifying physician "is entitled to evidentiary weight, which 'will vary with the circumstances, including the nature of the illness and the information

provided the expert.'" *Berrios Lopez*, 951 F.2d at 431 (quoting *Rodriguez*, 647 F.2d at 223).

Here, the ALJ considered Dr. Gaberman's opinion and credited, in particular, her view that Plaintiff could not engage in jobs which involved prolonged standing. The ALJ, however, discounted Dr. Gaberman's opinion insofar as it touched upon limitations connected with Plaintiff's heart disease. (See A.R. at 24.) In doing so, the ALJ relied not only on the opinion of Dr. Ram, one of the non-examining DDS physicians, but the medical records of Plaintiff's other treating physicians, Drs. Rhee, Giugliano and Giri, (A.R. at 6), all of whom are specialists in cardiology or vascular medicine. *See* 20 C.F.R. § 416.927(d)(5) (2007) (more weight on specialty issues is generally given to the opinion of a specialist than to a non-specialist). Having reviewed the record, the court cannot say that the ALJ's approach fell outside regulatory and caselaw directives.

3. Plaintiff's Subjective Complaints

Plaintiff also asserts that the ALJ failed to give full weight to the limitations imposed by her impairments which, she claims, were supported by the medical record. The court finds this argument meritorious, even without considering the additional evidence Plaintiff proffers.

Plaintiff testified that she had constant leg symptoms of tiredness, numbness, pain and swelling when she walked and that these symptoms were relieved only when she lay down and elevated her feet. (A.R. at 315.) She also testified about difficulty standing and said that she could tolerate sitting for only an hour or less. (See A.R. at

313-19.) She testified as well that she could not lift heavy items, although she could do some household chores such as cooking and grocery shopping with the help of her children and drive when necessary. (A.R. at 321-24.) According to Plaintiff, a typical day begins with waking up with her daughter, eating and bed rest for a few hours. (A.R. at 324.) She also testified that she had difficulty sleeping due to leg cramping and that her leg difficulties were the primary reason she could not work. (A.R. at 325.)

The ALJ found that the limitations described by Plaintiff were not reflected to the extent alleged in the records from her treating sources. (A.R. at 6.) Accordingly, the ALJ posed questions to the vocational expert based on an individual with the following limitations which, in his view, were supported by the record: lifting no more than ten pounds occasionally and only one or two pounds frequently; sitting six hours in an eight-hour day; standing and walking no more than ten minutes at a time for a total of two hours in a workday; alternating periods of sitting with standing or walking once every hour; and avoiding night driving, verbal instruction in noisy environments, and repetitive lifting and pushing. (A.R. at 330-32.) The vocational expert testified that an individual with such limitations could perform a number of jobs which existed in significant numbers in the regional economy. (*Id*.) In contrast, the vocational expert also testified, in answer to questions posed by Plaintiff's attorney, that an individual who needed to lie down periodically throughout the day was incapable of sustaining any employment. (A.R. at 332-33.)

The First Circuit has long acknowledged that an administrative law judge is not required to take a claimant's subjective allegations at face value. *See Bianchi v. Sec'y*

of Health & Human Servs., 764 F.2d 44, 45 (1st Cir. 1985) (citing *Burgos Lopez v. Sec'y of Health & Human Servs.*, 747 F.2d 37, 40 (1st Cir. 1984)). It is also well established that a court must generally defer to credibility determinations made by an administrative law judge. *See Frustaglia v. Sec'y of Health & Human Servs*., 829 F.2d 192, 195 (1st Cir. 1987); *Brown v. Sec'y of Health & Human Servs*., 740 F. Supp. 28, 36 (D. Mass. 1990).

A court, however, must also ensure, in appropriate cases, that an administrative law judge makes specific findings with respect to the relevant evidence when deciding to disbelieve a claimant. *See Da Rosa v. Sec'y of Health & Human Servs*., 803 F.2d 24, 26 (1st Cir. 1986). *See also* Social Security Ruling (SSR) 96-7p, Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements, 61 Fed. Regs. 34, 483, 34, 485-86 (1996) (requiring that "[w]hen evaluating the credibility of an individual's statements, the adjudicator must . . . give specific reasons for the weight given to the individual's statements"; and "the reasons for the credibility finding must be grounded in the evidence and articulated in the determination or decision"). This is just such a case. Although the ALJ touched upon Plaintiff's subjective complaints, he did not do so with sufficient specificity given Plaintiff's particular circumstances.

The central question regarding Plaintiff's limitations revolved around her expressed need to lie down several times during the course of a day. The hearing record is replete with such testimony. For example, Plaintiff described how the numbness in her lower extremities was relieved by "ly[ing] down flat on my bed" with

pillows under her legs (A.R. at 315), how sitting up does not relieve the numbness or the swelling (A.R. at 316), how she needs to lie down "[t]hree times a day, every day" for fifteen or twenty minutes (A.R. at 317-19), and how she was advised by Dr. Giugliano to lie down and elevate her feet (A.R. at 333).

Unfortunately for purposes of this court's review, the ALJ did not analyze Plaintiff's credibility with regard to this specific limitation. Nor did he adequately explain why a limitation of this sort would be inconsistent with the severe medical conditions from which Plaintiff no doubt suffers. Rather, the ALJ lumped all of Plaintiff's complaints together and stated in a somewhat conclusory way that "[c]omplaints to this extent are not reflected in the records from [Plaintiff's] treating sources." (A.R. at 24.) Given how much turns on Plaintiff's testimony concerning her need to lie down, the ALJ's analysis falls short. This, in turn, caused the ALJ to rely on the testimony of a vocational expert which may not have been properly grounded in substantial evidence.

IV. CONCLUSION

For the reasons stated, the Commissioner's motion to affirm is DENIED and Plaintiff's motion to reverse is ALLOWED insofar as the court believes that a remand is necessary for a further hearing consistent herewith.

IT IS SO ORDERED.

DATED: May 2, 2007

/s/ Kenneth P. Neiman
KENNETH P. NEIMAN
Chief Magistrate Judge